

NTSB Order No. EA-3909

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 7th day of June, 1993

Docket SE-8980

¹The Administrator has filed a reply. Respondent, in turn, filed a reply to the Administrator's reply, which we will not consider. Section 821.50 of the Board's Rules of Practice, 49 C.F.R. Part 821, specifically provides that a petition for reconsideration and a reply may be filed with the Board. No provision is made for the filing of additional briefs.

Our decision in Order EA-3845 considered and rejected respondent's contention that his nonattendance at the hearing was the product of inadequate notice of the hearing date, and his petition provides no new basis for revisiting that judgment. It does, however, attempt to explain why his attorney at that time did not attend the hearing. Specifically, respondent, through new counsel, suggests in his petition, for the first time, that inclement weather prevented his former attorney from attending the hearing on March 6th, and that prior commitments precluded him from attending the rescheduled hearing on March 7th. We do not discern in the stated reasons good cause for counsel's nonappearance.

While it is true that the law judge postponed the hearing because of a severe snowstorm, Mr. Llewellyn never contacted the law judge or our office of law judges on the 6th or later either to advise that he would not be, or had not been, able to attend the hearing because of any weather-related travel difficulties, to request a continuance, or, for that matter, to even inquire whether the hearing, with or without respondent in attendance, had been held in his absence. Such a contact would not have been expected, however, since Mr. Llewellyn on March 3rd had left word with the law judge's office that he had been unable to reach his client and that he planned to withdraw from the case.² See Hearing Transcript at 2-3. In these circumstances, we find ourselves unable to credit the suggestion that, but for the weather and other engagements, Mr. Llewellyn would have showed up to represent respondent on either date. To the contrary, we are constrained to observe that we find the suggestion more than a little disingenuous.

Respondent also asserts that the Administrator erred in the Order of Suspension, alleging that two flights took place when, in fact, respondent piloted only one. He claims that this error resulted in an excessive suspension. However, given our disposition of this case on a procedural ground, issues relating to sanction are not properly before us on a petition for

² Although Mr. Llewellyn asserts, in an affidavit attached to respondent's petition, that he was unable to attend the hearing on the 6th because of the snowstorm, he does not explicitly state that he intended to attend but encountered problems in, for example, acquiring transportation in order to do so. Further, he asserts that he could not appear on the 7th because of a previously scheduled matter. Again, he does not affirm that he would have attended the hearing on the 7th if no conflict had existed and if he had known about it. In this connection we note that since Mr. Llewellyn had not contacted the law judge or the Board on the 6th, he would not have known that the matter had been rescheduled for the 7th.

reconsideration.³

ACCORDINGLY, IT IS ORDERED THAT:

The petition for reconsideration is denied.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above order.

³Similarly, it is of no consequence now that respondent may have been able to produce exonerating evidence had he attended the hearing convened on his behalf.